IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 136 OF 2005

M/s. Jaiswal Steel Enterprises Pvt. Ltd. .. Applcant

Vs.

Bharat Sanchar Nigarm Limited. .. Respondent

Mr. A.G. Toraskar for the applicant.
Mr. R.R. Sharma for respondent.

**CORAM : B. H. MARLAPALLE,J.**

**Date : March 03, 2006.**

**P.C.:**

1. As noted in the earlier order dated 10/2/2006 this Arbitration Application was adjourned for exploring the possibility of an amicable settlement. Today the learned counsel for the respective parties stated that negotiations were undertaken for settlement but could not succeed and, therefore, they agree that a sole Arbitrator will have to be appointed for adjudicating the claims made in this application under Section 11 of the Arbitration and Conciliation Act, 1996.

2. A copy of the agreement has been placed on record and Section VI of the contract deals with the General (Commercial) Conditions of Contract. Clause 20 of the General Conditions provides for arbitration.

Clause 20.1 which is relevant for this application reads as under:-

> "20.1. In the event of any question, dispute or difference arising under this agreement or in connection there-with except as to matter the decision of which is specifically provided under this agreement, the same shall be referred to sole arbitration of the Chief General Manager Telecom, Maharashtra Circle, Mumbai or in case his designation is changed or his office is abolished then in such case to the sole arbitration of the officer for the time being entrusted whether in addition to the functions of the Chief General Manager Telecom, Maharashtra Telecom Circle, Mumbai or by whatever designations such officers may be called (hereinafter referred to as the said officer) and if the CGMT or the said officer is unable or unwilling to act as such to the sole arbitration or some other person appointed by the CGMT or the said officer. The agreement to appoint an Arbitrator will be in accordance with the Arbitration and Conciliation Act, 1996. There will be no objection to any such appointment that the arbitrator is Government Servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as Government Servant he has expressed views on all or any of the matter under dispute. The award of the arbitrator shall be final and binding on the parties. In the event of such arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reasons whatsoever such CGMT or the said officer shall appoint another person to act as arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors."

3. The arbitration is thus required to be undertaken as per the above referred clause and in the first instance the Chief General Manager Telecom,

Maharashtra Telecom Circle, Mumbai is to be the sole Arbitrator. The learned counsel for the respondent submitted that the designation of Chief General Manager Telecom has not been changed, as at present and, therefore, the officer holding the said post, as at present, could be appointed as the sole Arbitrator. As against the Clause 20.1, the learned counsel for the applicant submitted that a retired District Judge should be appointed as the sole Arbitrator, whereas the learned counsel for the respondent placed a copy of the letter dated 23/2/2006 addressed by the Deputy General Manager of the respondent to the applicant-firm and submitted that Mr. B.B. Singh, retired Adviser (HRD) Department of Telecom, New Delhi be appointed as the sole Arbitrator.

4. While entertaining an application under Section 11 of the Act, the appointment of the sole Arbitrator is required to be strictly as per the arbitration clause in the contract between the parties and, therefore, in the instant case in terms of Clause No.20.1, the Chief General Manager Telecom, Maharashtra Telecom Circle, Mumbai is hereby appointed as the sole Arbitrator to adjudicate upon the claims raised in this application. The parties shall appear before the Chief General Manager Telecome, Maharashtra Telecome Circle, Mumbai within a period of two weeks

from today and finalise the further terms of arbitral proceedings, including the time span etc.

5. The application is allowed in terms of the above directions.

**(B.H. Marlapalle, J.)**